

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING FEBRUARY 8, 2017

In attendance: Commissioners Ken A. Roberts, Richard W. Jackson, Tom Katsilometes, and Elliot S. Werk; Michael Chakarun, Roxanne Lopez, Chuck Pond, Mark Poppler, Doreen Warren, Steve Fiscus, Randy Tilley, John Bernasconi, Robin O'Neill, Phil Skinner, George Brown, Erick Shaner, David Young, Nathan Nielson, Mat Cundiff, Becky Ihli, and Kelly Martinez.

Guests: Kay Christensen, Katrine Franks, Miguel Legarreta, and Aaron Banks.

Public Session

Commissioner Ken Roberts convened the open meeting and welcomed all those in attendance.

Presentation of Certificates of Service

Roxanne Lopez, Human Resources Officer, acknowledged the employees receiving a Certificate of Service. Ms. Lopez stated how much their combined total of 40 years of state service was appreciated. The Certificate of Service recipient in attendance was Amy Cady, HR Association, Human Resources - 5 years of service.

The Certificate of Service recipients not in attendance were: Laura Turner, Tax Auditor 3, CDA Field Office – 10 years of service; and David Irwin, IT Systems Operator, IT – 25 years of service. They will receive their certificates at a later time.

The Commissioners expressed their congratulations to all the recipients and fellow employees who came out to support them, and how much they appreciate all their hard work.

Business Requiring Vote of the Commission

Minutes: Open Meeting – January 13, 2017

Commissioner Werk moved that the minutes of the open meeting held on January 13, 2017 be approved. Commissioner Katsilometes seconded the motion. There were no comments or amendments. All voted in the affirmative and the minutes of the open meeting held on January 13, 2017 were approved.

Administrative Reports

Audit Division, Randy Tilley

Randy Tilley reported that tax season is going well. They are working on fraud investigations and there were approximately 3,600 letters asking for documentation to verify identity sent out last week. They have not received any responses back yet, but should be receiving some very soon. They have temporary tax drive staff in place to assist in reviewing the documentation once those responses come back in. They are also in the process of updating and revising a letter specifically for those individuals who did not respond to our request for information last year. That letter is in the final drafting stages and will go back to those individuals when they file a return again this year asking them to verify their identity and verify their identity for previous

tax returns that we have requested identification verification for as well. Commissioner Werk said the idea of the letters to the people who didn't respond to numerous letters last year, is if they do respond this year it will also give us an opportunity to look at their last year return as well to be able to possibly release that refund that we have been hanging on to for them as a customer service. Mr. Tilley said that is absolutely correct, that is the intent and that is why we wanted to customize that letter specifically for those non-responders. It gives them the opportunity to provide us the documentation to verify their identity so we can address both the current year's return and last year's return where we had a question on identity.

Commissioner Jackson said they changed the federal law that 1099's are due January 31, did you have any letters that went out regarding 1099's? Mr. Tilley said he does not know what specifically triggered the letters for identity verification requests; those are found through a specific list of criteria that would indicate whether an individual is suspected of having a questionable identity. Commissioner Roberts asked of the approximately 23,000 letters sent out last year, is there a way to do a crosswalk between those who received letter last year and those who are receiving them again this year. Are any of the 3,600 letters just sent out the same individuals that received a letter last year? Mr. Tilley said we recognize that we have about 400 non-responders from last year that have already filed returns. The non-responders last year totaled approximately 4,560. As far as a crosswalk between letters that we sent out last year versus this year, he does not have any specific information on that but his sense is if they verified their identity last year, then we have a fairly good track record in the system and they could be less likely to get a letter this year. He can certainly gather that information for the Commission. Commissioner Roberts said that is something he would like to follow up on to make sure that if indeed a taxpayer received an identification verification letter last year and they responded and were verified, does that make a difference for this year's return. Doreen Warren said it is really important to know we are looking at a return on its individual characteristics, we are looking only at the return for this year so if it triggers a letter, it triggers the letter based on this year's information. Mr. Tilley said there are certain aspects that we look for regarding the return and some of those are differences from one year to the next. Someone may have verified their information last year, but if they have some of those characteristics that lead us to believe there is still a question, we may send out another letter this year to verify their identity.

There were no further questions.

Management Services, Mark Poppler

Mark Poppler reported that the JFAC budget presentation was held yesterday and he thanked Commissioner Roberts for a successful presentation with very few questions. The Committee is on schedule to finish budget hearings next week and they are scheduled to make statewide decisions beginning next Thursday. The budget settings for agencies should start Monday of the week following and typically we are one of the agencies that are set later in process rather than earlier so it will probably be the first week of March. Mr. Poppler reported that the refund fund was at a record high of nearly \$177.5 million at the end of January. This January balance was \$31.5 million ahead of last year. Regardless, we will be approaching the Subcommittee of Board of Examiners next week to present information on how the refund process is changing. This is partly due to advanced fraud services software that is delaying refunds that need verification, and those that don't trigger that seem to be flowing through more quickly. We want to bring this information to the committee's attention and get permission to borrow in case we need it.

Mr. Poppler said we haven't had a federal grant for the last five years and he was surprised with the new format of the JFAC hearing that that didn't cause a question because we have that fund with spending authority and documents put up the screen showed we have not used any of that for the entire period they looked at. We have finally received another grant, Mark Stones was notified of a grant that actually was applied for by the Nevada Division of Motor Vehicles and we

are receiving it because of participation in the Pacific Region Task Force. The money can be used to conduct joint audits; assist law enforcement agents with the March and May Blitz which is a multi-state interagency effort to combat fuels tax evasion by targeting commercial vehicle operators operating without proper International Fuel Tax Agreement registration; and it also allows employees to go to certain workshops and receive ExSTARS which is basic fuel evasion training.

There were no further questions.

Revenue Operations, John Bernasconi

John Bernasconi reported that they are firing on all cylinders and have received about 125,000 tax returns so far, which is slower this year than previous years. He believes that is driven by the IRS making the decision to slow down the refund process a bit until they can validate items for Earned Income Tax Credit. They anticipated that slow down and things should start heavily in the next ten days. Commissioner Jackson asked if you look at your operations, how beneficial would it be if you received the 1099 forms on January 31 like federal does. Mr. Bernasconi said the federal regulation is February 28 for 1099's, what they changed was the W2's. We attempted to make that change; however the statute says we can't be more restrictive than the IRS. We have a bit of a mismatch there, so what we did with the 967's that have a due date of January 31, is we asked that they provide any withholding they will eventually file on their 1099's to be included on that and then to do an amended 967 in February. He said it is a little cumbersome this year and they are hoping to work that out. Commissioner Roberts asked if the 1099's were embedded in the system on January 31 on a federal level is it better to get it in on January 31. Mr. Bernasconi said absolutely, more data earlier is always better. Commissioner Roberts said it is very likely that is something you could communicate to the national group that you are serving on as to get that information embedded in the system earlier.

Ms. Warren said when we found out we had a disconnect, we tried to synchronize it and were told we couldn't because the IRS was more restrictive. She then reached out to her IRS counterparts and they indicated it was intentional to leave that disconnect, but we can certainly communicate that synchronized reporting would make it easier for state processing. Ms. Warren said one of the challenges we have is that we do not collect all of that information off 1099's if they come in on paper. If they come in electronically we have that information available in our data stores but the 1099's coming in on paper, unlike W2's, we do not collect that information. If there is withholding on 1099's that come in on paper there is not a whole lot of value we get off that with our processes. Commissioner Werk said we are probably going down the rabbit hole here on whether we should collect that data if it comes in on paper, right? Ms. Warren said the answer to that question is it was actually on our target to do that but the IRS allows redacting of the social security on the 1099 so we had to put a hold on that because we would have to create a completely new algorithm to be able to gather that information. Now that they are allowing redacting on W2's we will be already building that algorithm and we may have the opportunity to extend that to the 1099's as well. Commissioner Werk said he is not sure he understood the purpose for the disconnect at the IRS level and he cannot see any value in disconnecting W2 information with 1099 information if you are trying to make sure you are not sending refunds out to fraudsters. Mr. Bernasconi believes that disconnect is based on the incidents of fraud which is so much higher on W2's than it is on 1099's. Commissioner Werk said it sounds like they are focusing on the biggest issue first.

There were no further questions.

Tax Division Administrator, County Support, Steve Fiscus

Steve Fiscus said he is assuming Mr. Banks is probably here to hear about timber values being set by the Commission, which is not on the agenda today. By statute, the values have to be set

by March 1; we have some legislation that hopefully gets passed so the Commission can hold an emergency meeting to set the values.

Mr. Fiscus said he has received a number of five-year plans that the counties are required to submit for their next five-year appraisal process. The first task is to make sure everyone completed the task and he has received those. He knows there is one county that we will not receive a five-year plan from because that county is still in limbo trying to determine how they are going to complete their current five-year plan in order to move on to the next one. Commissioner Katsilometes and Mr. Fiscus met with the Assessor yesterday and gave them a verbal notice to complete it as quickly as they can. Also coming due soon are ratio studies from the counties, and the consulting appraisers are actually here this week because of the counties being in town they come also. Those ratio studies are an indication of two things that the counties have to do: 1) a level assessment to make sure your home and property is at or near market value; 2) the second phase is to make sure there is uniformity.

The County Elected Officials are in town, the property tax division has met individually or as group with all of the Assessors, Clerks, and Treasurers. Mr. Fiscus thanked the Commissioners for attending the meeting with the Assessors because it really goes a long way in public relations. The Intergovernmental Affairs Committee meeting of the Idaho Association of Counties met at 8 o'clock this morning. Commissioner Roberts wanted to follow-up on the forestry bill saying that he did receive an email that it has been sent to the Revenue and Tax Committee. We expect the RS on that to be introduced shortly, which sets in motion the emergency clause that was needed on that piece of legislation for us to act on setting those values. Commissioner Roberts said once that passes we will have an emergency open meeting to move forward.

There were no questions.

Public Information Director, Taxpayer Resources, Doreen Warren

Doreen Warren reported that from a policy standpoint, all of our rules have been approved through both the House and Senate and our conformity bill is on its way to the Governor's office. She noted that the 2016 conformity bill passed on February 9, in 2015 it passed on February 23, and in 2014 it passed on February 13. The earliest it has passed was in 2013, which was on February 4. Ms. Warren said hopefully we will beat that February 9 date if we can get it signed today. The rest of the legislative package the Tax Commission initiated has passed the House and Senate going through the process to get to the Governor's office. There are a few key pieces of legislation that have not made it past the final steps. There is one that is on hold, and that is the non-resident vehicle sales and use piece of legislation. In addition to our legislative package, we are tracking approximately 32 potential legislative ideas and we are working with legislators to vetting those ideas before they become an actual RS. In a communications update, they are making some notice in the media regarding the short-term lodging, which had something to do with an RS introduced last week. We have a news story that will be filmed tomorrow with KTVB regarding short-term lodging. They are continuing with the refund messaging initiative, they have developed posters and flyers to hand out to various entities.

Ms. Warren said they are starting to see phone calls come in about the letters sent out for identity verification. Ms. Warren said Justine Weaver did an excellent job compiling the fraud stats from last year and that information will be shared at the national level at the Security Summit and she will be sharing specific confirmed fraud with our industry partners in a meeting we have with them next week. Commissioner Roberts said the reason that some of those fiscal notes have been held is because we have just received some new guidance on fiscal notes, Joint Rule 18, so we have had to go back and update some of the fiscal notes that said no impact to the general fund and explain why there is not impact. Mr. Tilley said he noticed on the afternoon agenda for the Senate Local Government and Tax Committee that there is an RS on identity theft and he asked if that is one of the bills Ms. Warren's division is tracking. Ms. Warren said yes, that is an idea they are

tracking. Commissioner Werk said there was mention in last month's meeting about changing the message when you call in to the Tax Commission, however last time he called in to the general number the old message was still there. Ms. Warren said we have switched to the new message on January 13, so it should be updated with more options, a clearer message, and the correct information.

There were no further questions.

Tax Appeals Manager, Mike Chakarun

Mike Chakarun had no report at this time.

There were no questions.

There were no more administrative reports.

Reports on Rules Committees

There were no rules committee reports.

Other Business

Commissioner Werk said this is his second full legislative session since he has been at the Commission, and it seems the legislature is going hard on tax bills and inquiries and the policy division and Taxpayer Resources Unit have been handling the volume very well. It is difficult because there is a lot of coordination going on in the background and there is a lot of pressure on people right now. He would like to express thanks to the Taxpayer Resources Unit because we are all feeling the pressure coming from the legislature and he wants to express gratitude for the work being done. Commissioner Roberts said after the release yesterday of the new revenues that were processed that DFM released, with the additional \$39.2 million above projections just for January they now have an above projections number of about \$140 million, which will most likely turn up the heat on tax related issues and questions. Commissioner Roberts agrees with Commissioner Werk that it has been very busy, he doesn't know that it will slow down anytime soon.

Commissioner Jackson said if you look at what Mr. Bernasconi reported about our returns coming in slower, the refund fund is at an all-time high that would have told him that those are estimated payments, either corporate or individual and might cause a different outcome in April. Mr. Bernasconi said he would have to look at where the money was coming from, it could be from increased sales tax. He said he was only reporting on individual income tax, so we know that is delayed this year but business income tax is timely and there is no slow down there. Commissioner Jackson said if you look at the numbers, individual income tax collections were way up, and corporate collections were way up, but the returns weren't there. He thinks there is a story there that will impact the whole tax season. Mr. Poppler said we don't really have the capability to analyze those types of things. He said individual income tax revenue has been very strong, business income tax has been strong and individual refunds have been similar to last year but business tax refunds are down significantly from last year. Commissioner Roberts said it is interesting that the refund fund is growing as it is. Ms. Warren said that would indicate that we have had an increase in withholding.

There were no more items of other business.

Public Comments

Commissioner Roberts asked if the guests in attendance had any comments.

There were no other public comments.

Executive Session

Commissioner Katsilometes moved to go into Executive Session with its legal counsel pursuant to Idaho Code § 74-206(1)(f) to discuss the current status of litigation to which the Commission is a party. Commissioner Werk seconded the motion. A roll call vote was taken by Kelly Martinez, Administrative Assistant and Commissioners Roberts, Katsilometes, Jackson, and Werk all voted in favor and the motion passed.

The Commission met in Executive Session with its legal counsel pursuant to Idaho Code § 74-206(1)(f) to discuss the current status of litigation to which the Commission is a party. No matters requiring a vote of the Commission resulted from the Executive Session.

Public Session

Commissioner Roberts declared the Executive Session ended and returned to the public session. There being no further business, Commissioner Jackson moved to adjourn the meeting, and Commissioner Werk seconded the motion. All voted in the affirmative and the meeting was adjourned.

Kelly Martinez

Ken A. Roberts